

1 PILLSBURY WINTHROP SHAW PITTMAN LLP  
2 ROXANE A. POLIDORA (CA Bar No. 135972)  
3 roxane.polidora@pillsburylaw.com  
4 LEE BRAND (CA Bar No. 287110)  
5 lee.brand@pillsburylaw.com  
6 Four Embarcadero Center, 22nd Floor  
7 San Francisco, CA 94111  
8 Telephone: (415) 983-1000  
9 Facsimile: (415) 983-1200  
10  
11 Attorneys for Defendant  
12 STARKIST CO.  
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15 WARREN GARDNER, et al., on behalf of  
16 themselves and all others similarly situated,  
17 Plaintiffs,  
18 v.  
19 STARKIST CO., a Delaware Corporation,  
20 Defendant.  
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Case No. 3:19-cv-02561-WHO

**STARKIST CO.'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
ISSUANCE OF LETTER  
ROGATORY**

Date: January 6, 2021  
Time: 2:00 p.m.  
Place: Courtroom 2, 17th Floor  
Judge: Hon. William H. Orrick

1    I.     INTRODUCTION

2       Following the Court’s dismissal of Dongwon Industries Co. Ltd. (“Dongwon” or  
 3     “DWI”) with prejudice from this litigation, Plaintiffs now move for issuance of a letter  
 4     rogatory to seek discovery from DWI. Plaintiffs’ Motion is based on the false premise that  
 5     “Dongwon owns or controls the fishing vessels that capture StarKist tuna.” Motion at 2. In  
 6     fact, as already explained to Plaintiffs, StarKist “procures a small minority of its raw fish  
 7     from DWI”—“approximately 3% of StarKist’s overall raw fish supply” so far this year—  
 8     and does so “via the same arms-length purchasing process that StarKist utilizes with its  
 9     other raw fish suppliers.” StarKist’s Discovery Letter at 3. Moreover, StarKist has already  
 10   agreed to “produce contracts of purchase for tuna incorporated into StarKist branded  
 11   Products sold in the United States, and relevant documents required by such contracts  
 12   including NOAA Form 370s, captain’s statements, and StarKist ‘Dolphin Safe’  
 13   certificates.” StarKist’s RFP Responses at 15. Such contracts and associated documents  
 14   already reflect the tuna that StarKist sources from DWI and the fishing methods that DWI  
 15   uses to catch that tuna.

16       Plaintiffs told StarKist their true interest in seeking discovery from DWI: Plaintiffs  
 17   hope to discover that DWI utilizes fishing practices that they deem unseemly, and then  
 18   employ a guilt by association strategy. Brand Decl. ¶ 3. As Plaintiffs admit in their  
 19   Motion, however, this case is about StarKist’s representations “that *its* tuna products” are  
 20   dolphin safe and whether dolphins are harmed “by *its* fishing methods.” Motion at 1  
 21   (emphasis added).

22       In sum, StarKist has already agreed to provide information about all “boats that  
 23   supplied tuna *for StarKist products*,” including boats owned by DWI. StarKist’s Discovery  
 24   Letter at 3. However, “[b]oats fishing for tuna that does not end up in StarKist products are  
 25   simply not relevant to this litigation, regardless of who owns those boats.” *Id.* at 3-4.  
 26   Accordingly, the discovery sought from DWI is either duplicative or irrelevant and the  
 27   Court should deny Plaintiffs’ Motion.

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1   **II. PROCEDURAL HISTORY**

2       **A. DWI's Dismissal with Prejudice**

3           Plaintiffs initially named DWI as a defendant in their June 17, 2019 First Amended  
 4   Complaint. *See* Dkt. 37 (“FAC”). On December 2, 2019, the Court dismissed DWI from  
 5   this action for lack of personal jurisdiction and denied Plaintiffs’ request for jurisdictional  
 6   discovery. *Gardner v. StarKist Co.*, 418 F. Supp. 3d 443, 462, 466 (N.D. Cal. 2019). In  
 7   holding that the FAC failed to allege that StarKist operated as DWI’s alter ego, the Court  
 8   noted that Plaintiffs offered no “facts regarding the marketing and product relationship  
 9   between Dongwon and StarKist” but rather only “bluster.” *Id.* at 464. In holding that the  
 10   FAC failed to allege an agency relationship between the companies and finding  
 11   jurisdictional discovery inappropriate, the Court similarly described Plaintiffs’ “conclusory  
 12   allegation that ‘Dongwon controlled all aspects of StarKist’s canned tuna business’” as  
 13   “attenuated and bare.” *Id.* at 465-66 (quoting FAC ¶ 107).

14           On December 23, 2019, in the still-operative Second Amended Complaint, Plaintiffs  
 15   once again named DWI as a defendant. *See* Dkt. 75 (“SAC”). On March 31, 2020, the  
 16   Court once again dismissed DWI from this action for lack of personal jurisdiction, this time  
 17   with prejudice, and once again denied jurisdictional discovery. *Gardner v. StarKist Co.*,  
 18   No. 19-CV-02561-WHO, 2020 WL 1531346, at \*5-7 (N.D. Cal. Mar. 31, 2020). The SAC  
 19   still failed to allege alter ego liability because it merely realleged “that Dongwon ‘directly  
 20   participated in’ StarKist’s false advertising campaign,” and the Court had “already rejected  
 21   these allegations as insufficient to establish ‘conduct amounting to bad faith.’” *Id.* at \*6.  
 22   As for agency, the Court likewise held that “the SAC includes the same conclusory  
 23   allegation that I previously found inadequate.” *Id.* at \*5 n.1.

24       **B. Plaintiffs' DWI-Related Discovery to StarKist**

25           Notwithstanding DWI’s dismissal from the case with prejudice, Plaintiffs  
 26   nevertheless boldly sought broad discovery about DWI through StarKist. For example,  
 27   Plaintiffs attempted to define the terms “StarKist,” “You,” and “Your” in their discovery  
 28   requests as “including, without limitation, Dongwon.” Declaration of Stuart A. Davidson in

1 Support of Plaintiffs' Motion for Issuance of Letter Rogatory, Ex. B ("StarKist's RFP  
 2 Responses") at 7. Plaintiffs also more directly sought broad information about DWI from  
 3 StarKist, including: "All Documents and Communications relating to any harm or killing,  
 4 whether intentional or unintentional, of dolphins by any fishing by Your fishing fleet, or  
 5 any boat in which You or **Your owners** have any financial interest." *Id.* at 13 (RFP No. 5)  
 6 (emphasis added); *see also id.* at 15 (RFP No. 8), 17 (RFP Nos. 10-11), 50-51 (RFP Nos.  
 7 49-50).

8 StarKist and Plaintiffs first met and conferred about Plaintiffs' discovery requests  
 9 on September 22, 2020. *See Declaration of Lee Brand filed herewith ("Brand Decl.") ¶ 2.*  
 10 During that conversation, StarKist's counsel specifically pointed out that RFP No. 5  
 11 broadly included any and all DWI fishing activities, regardless of whether such fishing had  
 12 anything to do with the tuna sold by StarKist that is the focus of this litigation. *Id.*  
 13 Plaintiffs' counsel responded that they indeed wanted to know about any harm to dolphins  
 14 caused by DWI, and asserted that if StarKist's parent company is harming dolphins in any  
 15 way, that fact, in and of itself, would render it misleading for StarKist to label its tuna  
 16 products as dolphin safe. *Id.* ¶ 3. StarKist's counsel stated that this theory was neither  
 17 reflected in the SAC nor a plausible way in which Plaintiffs could establish their claims  
 18 against StarKist. *Id.* ¶ 4.

19 On October 29, 2020, Plaintiffs sent StarKist a letter asserting that StarKist had  
 20 improperly objected to discovery requests seeking information about DWI. Brand Decl.  
 21 Ex. 1 ("Plaintiffs' Discovery Letter") at 5. Notably, Plaintiffs wrote:

22 [I]t is curious that StarKist would claim that Plaintiffs are not entitled to documents  
 23 concerning Dongwon's services to and communications with StarKist when  
 24 StarKist repeatedly claims in its Responses that "it does not own, operate, or hold  
 25 any financial interest in any fishing vessels." That may well be true, but that just  
 proves the relevance of information regarding Dongwon, which is not only  
 StarKist's parent company, but one of the largest fishing companies in the world  
 that captures much, if not all, of the tuna put in StarKist's products.

26 *Id.*; *see also id.* at 5-6 (confirming that references to "**Your owners**" were intended to  
 27 "specifically incorporate boats owned or operated by Dongwon").

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1           On November 19, 2020, StarKist responded with a letter clarifying its objections to  
 2 Plaintiffs' DWI-related discovery requests. Brand Decl. Ex. 2 ("StarKist's Discovery  
 3 Letter") at 3-4. First, the letter addressed Plaintiffs' wildly inaccurate assertions about the  
 4 StarKist-DWI relationship, stating in relevant part:

5           Plaintiffs premise the relevance of these [DWI-related] RFPs on the strikingly false  
 6 assertion that DWI "captures much, if not all, of the tuna put in StarKist's  
 7 products." In reality, StarKist procures a small minority of its raw fish from DWI.  
 8 For example, total fish purchases from DWI year to date are approximately 3% of  
 StarKist's overall raw fish supply. And such procurement is conducted via the same  
 arms-length purchasing process that StarKist utilizes with its other raw fish  
 suppliers.

9           *Id.* at 3; *see also* Brand Decl. ¶ 7. Next, StarKist's Discovery Letter confirmed that it was  
 10 not objecting to a request for information about DWI's "boats that supplied tuna **for**  
 11 **StarKist products**, but that such a request was already reflected in RFP No. 7." *Id.*; *see also*  
 12 Brand Decl. ¶ 4; StarKist's RFP Responses at 15 (Response to RFP No. 7) (agreeing to  
 13 "produce contracts of purchase for tuna incorporated into StarKist branded Products sold in  
 14 the United States, and relevant documents required by such contracts including NOAA  
 15 Form 370s, captain's statements, and StarKist 'Dolphin Safe' certificates"). Rather,  
 16 StarKist's objection was limited to providing information about "[b]oats fishing for tuna  
 17 that does not end up in StarKist products," because such information is "simply not relevant  
 18 to this litigation, regardless of who owns those boats." StarKist's Discovery Letter at 3-4.

19           **C. Plaintiffs' Letter Rogatory**

20           Plaintiffs now seek the same discovery directly from DWI, asking the Court to  
 21 approve categories of document requests regarding: "(a) Dongwon's procurement of tuna  
 22 for StarKist; (b) Dongwon's use of fishing methods such as purse seine nets, FADs, and  
 23 longlines to capture tuna for StarKist; and (c) dolphin harm or deaths during Dongwon's  
 24 capture of tuna." Motion for Issuance of Letter Rogatory ("Motion") at 2. More  
 25 specifically, Plaintiffs seek to serve DWI with sixteen separate document requests, only six  
 26 of which—Nos. 4 through 8 and 16—are limited in any way to materials relevant to  
 27 StarKist or its business. *See* [Proposed] Request for International Judicial Assistance  
 28 (Letter Rogatory) Re: Dongwon Industries Co. Ltd., Attach. A (the "DWI Requests").

1 Further, notwithstanding the fact that the Court's Standing Order for Civil Cases requires a  
 2 meet and confer and a concise joint statement of five pages or less in the event of a  
 3 discovery dispute, Plaintiffs filed their full-blown Motion without ever mentioning to  
 4 StarKist their intention to seek a letter rogatory from this Court. *See* Brand Decl. ¶ 8.

5 **III. ARGUMENT**

6 Plaintiffs acknowledge that this Court has no obligation to issue their requested  
 7 letter rogatory, but rather that the question of “[w]hether to issue such a letter is a matter of  
 8 discretion for the court.” Motion at 3 (quoting *Pesch v. Indep. Brewers United Corp.*,  
 9 2014 WL 5106985, at \*2 (N.D. Cal. Oct. 10, 2014) (quoting *Asis Internet Servs. v. Optin  
 10 Glob., Inc.*, No. C-05-05124 JCS, 2007 WL 1880369, at \*3 (N.D. Cal. June 29, 2007))).  
 11 Moreover, Plaintiffs acknowledge that the Court should reject the DWI Requests if they are  
 12 not “relevant to any party’s claim or defense and proportional to the needs of the case,” *id.*  
 13 (quoting Fed. R. Civ. P. 26(d)(1)); and that Plaintiffs themselves “bear[] the burden of  
 14 demonstrating that proceeding [through the Hague Convention] is necessary and  
 15 appropriate,” *id.* at 4 (quoting *Metso Minerals Inc. v. Powerscreen Int’l Dist. Ltd.*, 2007  
 16 WL 1875560, at \*2 (E.D.N.Y. June 25, 2007)).

17 Plaintiffs cannot meet this burden with respect to the six StarKist-Related DWI  
 18 Requests because they are duplicative of discovery that StarKist has already agreed to  
 19 produce and thus neither proportional to the needs of the case nor necessary. *See, e.g.*,  
 20 *Pesch*, 2014 WL 5106985, at \*3 (denying letter rogatory because “the information  
 21 Defendants seek ‘can be obtained from some other source that is more convenient or less  
 22 burdensome” (quoting Fed. R. Civ. P. 26(b)(2)(C))). As set forth above, StarKist has  
 23 already agreed to produce its contracts of purchase for all the raw fish that goes into the  
 24 tuna products at issue in this litigation, including its purchases from DWI. *See* StarKist’s  
 25 RFP Responses at 15 (Response to RFP No. 7); Brand Decl. ¶ 4. Such contracts require,  
 26 and include as attachments, various other purchase-specific documents including NOAA  
 27 Form 370s, captain’s statements, and StarKist’s own required “Dolphin Safe” certificate.  
 28 *Id.* These documents will identify to Plaintiffs the core information sought by DWI

1 Request Nos. 4 through 8—*i.e.*, all DWI boats that supplied the tuna in StarKist’s Products,  
 2 the captains of such boats, the fishing methods used to catch such tuna, and the amount paid  
 3 for the tuna. *See* Brand Decl. ¶ 9.<sup>1</sup>!

4 Plaintiffs cannot meet their burden with respect to the remaining ten DWI Requests  
 5 because they are based on speculation regarding DWI’s fishing practices, which are  
 6 irrelevant to Plaintiffs’ claims to begin with, and thus similarly neither proportional to the  
 7 needs of the case nor necessary. *See, e.g., Pesch*, 2014 WL 5106985, at \*2 (denying letter  
 8 rogatory because “discovery request is a fishing expedition based on speculation”); *Asis*,  
 9 2007 WL 1880369, at \*4 (denying letter rogatory due to lack of “concrete evidence to  
 10 support” purported relevance). In various iterations, these document requests broadly seek  
 11 any and all information that DWI has about dolphin safety. Plaintiffs acknowledge that  
 12 DWI “is one of the world’s largest fishing companies,” “leading Korea’s fishing industry”  
 13 and “sailing across the five oceans,” Motion at 4, but do not seek to tether the requests in  
 14 any way to the small percentage of DWI’s fishing activity used to supply a small  
 15 percentage of the fish for the StarKist products at issue in this litigation. What is more, all  
 16 ten requests lack a limitation to fishing related to U.S. commerce, and most lack a limitation  
 17 to fishing for tuna. In short, the majority of the DWI Requests seek this Court’s assistance  
 18 in conducting an audit of DWI’s worldwide fishing practices in the hopes of finding some  
 19 evidence of harm to dolphins that Plaintiffs can use to smear StarKist based on the entities’  
 20 corporate relationship. Neither discovery in U.S. civil litigation nor the Hague convention  
 21 is intended to serve such a purpose.

#### 22 IV. CONCLUSION

23 StarKist respectfully requests that the Court deny Plaintiffs’ Motion.

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25 <sup>1</sup> DWI Request No. 16 seeks communications between StarKist and DWI regarding  
 26 dolphin safety. While StarKist disputes that there is any particular significance to  
 27 communications with DWI on this subject, it has nevertheless broadly agreed to “produce  
 28 non-privileged documents that relate to the dolphin safety of StarKist branded Products  
 sold in the United States,” *see* StarKist’s RFP Responses at 43 (Response to RFP No. 40),  
 which would plainly include communications about the dolphin safety of its relevant tuna  
 products with any of its tuna suppliers.

1                   Dated: December 7, 2020

2                   PILLSBURY WINTHROP SHAW PITTMAN LLP  
3                   ROXANE A. POLIDORA  
4                   LEE BRAND  
5                   Four Embarcadero Center, 22nd Floor  
6                   San Francisco, CA 94111

7                   By: /s/ Roxane A. Polidora  
8                   Roxane A. Polidora

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Attorneys for Defendant  
STARKIST CO.